

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
SOUTHERN PACIFIC COMPANY—PACIFIC LINES

STATEMENT OF CLAIM: Claim that Signal Maintainer J. W. House be allowed payment for four (4) hours December 29, 1944 and two (2) hours December 30, 1944 at time and one-half rate account not being called to correct signal irregularities on his section on those dates.

EMPLOYEES' STATEMENT OF FACTS: Signal Maintainer J. W. House, with a seniority date of March 18, 1930, bid on and was assigned to the signal maintainer's position with headquarters at Animas, New Mexico.

The Animas signal maintainer's section extends from Signal 1161.8 to Signal 1193.1, a distance of 31.3 miles. This section consists principally of automatic block signals.

On December 29, 1944 at about 10:45 p.m., Signal 11733 was reported to be in stop position and P. J. Trudeau, signal maintainer on the adjoining section with headquarters at Rodeo, New Mexico, was called to investigate and, if inoperative, restore to proper operation. When Signal Maintainer Trudeau arrived at Signal 11733, which was located on Signal Maintainer House's section, he found the signal functioning properly. After making necessary inspection of the controlling apparatus and finding it functioning as intended, he returned to his headquarters at Rodeo. Time claimed and paid Signal Maintainer Trudeau was two (2) hours at the overtime rate. Later that same night, or more specifically at about 5:55 A. M. December 30, 1944, Signal Maintainer Trudeau was again called to investigate Signals 11702 and 11706 which were reported to be in stop position. Upon arriving at Signals 11702 and 11706 he found them in stop position due to improper installation of cattle guard which had recently been installed by the track forces. Signal Maintainer Trudeau made the necessary repairs and returned to his headquarters. Time claimed and paid was four (4) hours at the overtime rate.

Signals 11702, 11706 and 11733 are all located on the territory maintained by Signal Maintainer House and are much closer to Animas, House's headquarters, than to Rodeo, Signal Maintainer Trudeau's headquarters.

Animas is a small village with a population of about 30 persons. The company maintains a daytime telephone and telegraph office at this station for its own use. There is no outside or private telephone in the entire community. Signaller House lives in a company owned house which is located approximately 200 feet from the depot on the company right-of-way.

It would be a simple and inexpensive installation to connect the dispatcher's or company telephone so that the maintainer could be called direct by the dispatcher when the telegraph office is closed. The amount of mate-

The carrier has no desire to deprive employees covered by the current agreement of work that is rightfully theirs. In the instant case the carrier had no desire to deprive the claimant of work and would have called him to perform the work involved on December 29 and 30, 1944 if it was possible. However, it was not possible, and the carrier therefore called the maintainer on the adjacent district to perform the work. The result of course was that an employee covered by the current agreement performed the work, and was compensated therefor in accordance with Rule 14 of the current agreement. Notwithstanding these facts, the petitioner in the presentation of the claim, is actually contending for the payment to two employees in the same class covered by the current agreement for the performance of the work, notwithstanding the fact that the claimant did not perform the work for the reason that it was not possible to call him to perform the work.

The petitioner's position, the carrier submits, is entirely unreasonable and illogical and is not supported by the specific language of Rule 14 and is likewise in direct opposition to the intention of the parties when they agreed to said rule.

CONCLUSION: The carrier asserts that to sustain the claim in this docket would in fact write into Rule 14 of the current agreement a requirement not agreed to by the parties to said agreement and a requirement in direct opposition to the intention of the parties when they agreed to said rule. Such being the case, the carrier submits that the said claim should be denied.

OPINION OF BOARD: The part of Rule 14 material to our determination of this claim is "Unless registered absent, regular assigned employees will be called".

Claimant was not registered absent. He was subject to call and ready for service. Trouble developed on his "maintainer section". The Maintainer from an adjoining section was called to do emergency work on Claimant's section. Claimant claims pay because he was not called.

The Carrier admits that Claimant would have been called had there been available telephone communication service, but contends that such service being unavailable, the making of the call was impossible, and hence excused.

Carrier further contends that when the rule was negotiated, it was recognized by the parties that at certain points, telephone service was not available at certain hours and "it was clearly understood during the discussions that culminated in agreed to Rule 14 * * * that in the event it was necessary to have work performed on a given maintainer's district at a time when it was not possible to reach said maintainer, that the carrier would call such maintainer as it could contact in close proximity to the work to perform such work, and that under such circumstances the maintainer on whose district the work was performed and who was not called due to it being impossible to call him, would not be entitled to payment under Rule 14.

As we held in Award 3289, Docket MW-3283, "It is an established rule, founded on good reason, that where a written agreement has been entered into, all prior and contemporaneous negotiations and understandings are merged in the writing. The written agreement expresses the intentions of the parties. Any other rule would destroy the benefits of a written agreement." The carrier is here contending for an exception to the rule that does not exist in the written rule.

Under the rule the duty to make the call rests on the Carrier, the duty to respond rests on the employee. Carrier pleads an impossibility of making the call. Such a situation as existed does not fall in the category of an impossibility that excused performance. The making of the call was possible but not practical. It was not the duty of the employee to furnish a practical means to the Carrier. That duty rested on the Carrier. It having contracted to make the call, and not having done so, must respond in the payment which the rules require.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of September, 1946.